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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1938

No. 222

THE WASHINGTONIAN PUBLISHING COMPANY, INC.,
Petitioner,

v.

DREW PEARSON, ROBERT S. ALLEN AND VAN REES PRESS, INC., ET AL.,
Respondents.

PETITIONER'S REPLY TO RESPONDENTS' SUPPLEMENTAL BRIEF FILED AFTER ORAL ARGUMENT

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At the conclusion of the oral argument of the cause the petitioner understood the Court to grant the respondents' request that they be permitted to file a further brief on the question simply of the meaning of the phrase "claim of

copyright," as used in the Copyright Law. In view of the extended scope of the brief so filed by the respondents and the new matter contained therein, the petitioner respectfully submits the following reply for consideration by the Court:

REGISTRATION OF CLAIM TO COPYRIGHT IS NOT REQUIRED TO EFFECT DEPOSIT OF COPIES UNDER THE COPYRIGHT LAW.

The fallacy of the respondents' contentions in respect to deposit of copies of a copyright work and registration of claim to copyright thereof, is that the Copyright Law provides for deposit of copies as a prerequisite to registration (Title 17 U. S. C. A., Sec. 10) and *not* registration as a requisite to deposit of copies. For the first time the respondents in their Supplemental Brief contend that "registration must be obtained at the same time that copies are deposited." They erroneously predicate the alleged requirment upon Section 11, which deals exclusively with *un*published works, and upon the latter part of Section 12 (quoted on page 2, Respdts.' Supp. Brief) where the phrase "claim of copyright" relates exclusively to *un*published works (referred to in Section 11) and not to published works. In the case at bar, the article was *published* with notice of copyright as prescribed by the Copyright Law.

Section 11 and that portion of Section 12 referred to above, provides that copyright of an *un*published work cannot be had *unless* a copy thereof is deposited together with a "claim of copyright." The "claim of copyright" corresponds to the notice of copyright on a published work. It is the owner's formal declaration of his copyrightable interest in the unpublished work.

The Copyright Law prescribes no form for the "claim of

copyright," as it does for "notice of copyright" (Sec. 18). The Copyright Office, in its Rules and Regulations (Copyright Office Bulletin, No. 15, issued 1926) indicates in parenthesis in Sections 22 and 23 that the "claim of copyright" for unpublished works should preferably take the form of an application for registration and not that registration need be effected unless such is desired (17 U.S.C.A. following Sec. 53, pp. 180, 183). The respondents, on page 3 of their Supplemental Brief, have cited and quoted from said part of the Rules and Regulations, but have failed to disclose that said part is entitled *"How to Secure Registration."*

In a further attempt to support their erroneous position, the respondents cite Sections 54 and 55 of the Copyright Law. Section 54 provides in its pertinent parts that "whenever deposit has been made in the copyright office of a copy of any work under the provisions of this title, he [the register of copyrights] shall make entry thereof" in his records. And Section 55 provides in its pertinent parts that "in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office," containing certain prescribed information. Section 54 would be useless if registration was required at the time of deposit of copies as Section 56 provides for recording of all copyright registrations, and does *not* refer to articles that are only deposited. Furthermore, contrary to the contention of the respondents, the entry provided for in Section 55 does not contain the information which appears on the certificate of registration because said entry does not record registration but merely deposit of copies. The application for registration is the source of the information contained in the certificate of registration. The entry in question is to show that the copies have been deposited which, under Sec-

tion 10, is a prerequisite to registration of a claim to copyright and the issuance of a certificate of registration.

The Copyright Law does not *require* registration of a claim to copyright at any time during the life of the copyright. The registration fee provided by the Act is not to raise revenue, but is to defray the cost of registration if and when sought by the copyright owner.

Section 56 of the Copyright Law, quoted in part on page 5 of the respondents' Supplemental Brief, imposes on the Register of Copyrights the duty of indexing, cataloguing and publishing certain information as he *may* have, for Sec. 10 (the registration provision of the Act) provides merely that a "person *may* obtain registration of his claim to copyright * * *." Sections 57 and 58 make such information available to the public. No "official registry" as conceived by the respondents, is contemplated in the Act, nor can such be effected without materially changing the law.

The reason for the requirement that copies of a published work be deposited in order to obtain registration of a claim to copyright thereof, is that the Copyright Office have proof of the existence of the copyright sought to be registered. The purpose of registration, in turn, is simply to provide *for the benefit of the copyright owner* a permanent record of his copyright and to facilitate the matter of proof thereof. That portion of Section 56 of the Copyright Law not quoted by the respondents, provides that "the current catalogues of copyright entries and the index volumes herein provided for shall be admitted in any court as prima facie evidence of the facts stated therein as regards any copyright registration."

In the case at bar, copyright attached to the article by virtue of Section 3 of the Copyright Law as the magazine containing the article was published with notice of copy-

right thereon in accordance with the Copyright Law. Registration, deposit of copies and any other like steps taken in the matter do not serve to spread upon the records of the Copyright Office or the Library of Congress, or elsewhere, any information regarding a particular article contained in a copyrighted magazine. Consequently the respondents' arguments are not only unfounded, but are clearly inapplicable to the present case.

Respectfully submitted,

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